

US EPA ARCHIVE DOCUMENT



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION VIII**

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DENVER, COLORADO 80202-2466**

OCT 24 1996

Mr. Jerry Mark, Director  
Cheyenne Board of Public Utilities  
P.O. Box 1469  
Cheyenne, WY 82003

Dear Jerry:

Please accept my apologies for not having responded sooner to your letter of August 16. Summer field work and activities associated with the end of the fiscal year kept our Crow Creek team from being able to discuss your letter together.

The regulatory flexibility that you requested is within the range of possibilities that EPA could provide for the XLC Project on Crow Creek. That is, the requirement to comply with whatever standards are adopted by the State of Wyoming could be extended to 12 years from now. However, that flexibility would be contingent on developing a Final Project Agreement (FPA) for the XLC Project with strong stakeholder participation that includes a schedule with milestones towards demonstrating superior environmental results. Our approval of a 12-year schedule of compliance from today would also require approval from the Wyoming Department of Environmental Quality (DEQ) as well as a commitment to implementing improvements to Crow Creek that will demonstrate superior environmental results to what would have been achieved had ammonia removal not been delayed, and support for the FPA from the community.

We expect continued diligence in resolving the outstanding water quality standards issues and exploring alternative options for meeting the applicable standards as soon as possible. The standards implementation issues that need to be pursued are: 1) resolution of the outstanding water quality standards issues about use(s) and criteria, and 2) investigation of whether or not treatment options, other than a nitrification add-on, could meet the standards established. The DEQ and the Board need to complete the use attainability analysis now underway and resolve the use(s) question. The appropriateness of a site-specific standard for ammonia should be explored as well. These issues should be resolved as quickly as possible so that the target is established and the Cheyenne Board of Public Utilities (Board) can begin investigating the potential for alternative approaches to meeting that target. Therefore, the meeting of the technical experts familiar with the existing data and status of the UAA that was scheduled for August needs to be rescheduled soon.

The 12-year scenario is appropriate only if a nitrification add-on to current treatment design is shown to be the only way of ensuring compliance with the anticipated un-ionized ammonia standard. Because the schedules for planned treatment upgrades and resolution of the outstanding water quality standards issues are not sufficiently synchronized to allow for a reasoned decision on nitrification now, we believe it makes sense to allow for a delay in implementing that approach until



the next significant treatment upgrade (i.e., 12 years from now). If it is demonstrated, however, that an alternative treatment option such as a constructed wetland could meet the standards sooner, we would expect that approach to be implemented as soon as it was feasible. Since a constructed wetland strategy would not be dependent upon significant reconfiguration of the treatment plant(s), the basis for the 12-year delay would not longer apply and implementation of the standard could be expedited.

If the analysis of alternative treatment options shows that a nitrification add-on to the treatment plant is the only way to ensure compliance with the standard, then the Board would need to proceed with design far enough in advance of construction to ensure that the required treatment is implemented concurrent with the next scheduled plant upgrade. We expect the standards to be implemented 12 years from now. Therefore, the 12-year period should be considered the maximum time available for compliance with whatever standards are adopted by the State, and the FPA will need to reflect the iterative implementation of activities leading to compliance with standards within that 12-year time frame. In addition to the the water quality standards issue, whole effluent toxicity (WET) and TMDL requirements similarly will have to be addressed through the XLC process. Our commitment through the XLC process, then, would be to defer compliance beyond the next permitting cycle (which would be approximately six years from now) if it is demonstrated that a nitrification add-on is needed. This delay in compliance would acknowledge both the superior environmental benefits that will accrue to the Crow Creek watershed as a result of the Board's participation in the XLC process and the engineering logic of adding nitrification as part of the next treatment plant upgrade.

A FPA is dependent on participation by the various citizens and organizations in Cheyenne who have an interest in Crow Creek. Entering into a public participation process does not guarantee that a FPA will result nor does it require any entity to improve Crow Creek without a FPA beyond what is required by current environmental laws. On the other hand, a FPA reflecting strong public involvement is a necessary condition for EPA to provide the regulatory flexibility you seek. It also helps identify those who could help implement actions that lead to superior environmental results. Public participation is not a means to criticize either the Board, the City of Cheyenne or EPA through a traditional public hearing process. Rather, it is meant to bring interested people into meaningful discussions about a community vision for Crow Creek and, if interest exists, find solutions from the entire community, not just the Board.

The Project Proposal is a starting point for discussions to develop the FPA. Although Project XLC has criteria which must be met, the Board is not necessarily responsible for each specific item it proposed. It must be made clear at the beginning of discussions with interested community members, that there is no expectation for anyone to be responsible for voluntary stream restoration without having agreed to a FPA under Project XL. On the other hand, the Cheyenne community may ultimately determine that Crow Creek restoration is a priority for their community and be willing to support that restoration through their own actions or sources of funds, regardless of the outcome of a Project XLC agreement.

During the development of the FPA the goals, the actions and responsible parties for those actions will be agreed upon by all parties involved. What we are seeking are environmental results



that are superior to simply requiring the Board to meet water quality standards in approximately six years. The Board and the Cheyenne community may agree that the best way to accomplish those results is as described in the XLC proposal. However, you may discover through the public participation process that other, possibly less costly, solutions can be developed through greater collaboration among and contributions from the entire community.

The more quickly the community becomes engaged in developing a FPA, the sooner we will all know whether a project can be developed that produces the greater environmental benefits needed to extend compliance with water quality standards out to 12 years. It is the Board's responsibility to initiate a process that involves all interested members in the community. We may be able to provide assistance with identifying and implementing appropriate public involvement techniques if it is requested. Before we can continue to discuss the technical details of regulatory flexibility, we need a commitment to initiate stakeholder involvement which is a fundamental process requirement of Project XL.

I sincerely hope that this letter provides you with the information you need to make your decisions regarding this project. I believe that your leadership on this project offers unprecedented potential for a notable example of environmental improvement through community involvement in Wyoming. I appreciate your patience and willingness to help us work through the questions that have come up during this project. Please feel free to contact me at 303-312-6236, or Dave Schaller at 303-312-6146 if you have further questions.

Sincerely,



Karen Hamilton

cc: Joe Dougherty, Cheyenne Mayor's Office  
Gary Beach, Wyoming Department of Environmental Quality  
Jack Hiding, Environmental Protection Agency  
Jamal Kadri, Environmental Protection Agency

